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7 UNITED STATES DISTRICT COURT  
8 CENTRAL DISTRICT OF CALIFORNIA  
9 WESTERN DIVISION  
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11 GWENDOLYN G. KENNEDY, ) No. CV 10-01338-VBK  
12 )  
13 Plaintiff, ) MEMORANDUM OPINION  
14 ) AND ORDER  
15 v. )  
16 ) (Social Security Case)  
17 MICHAEL J. ASTRUE, )  
18 Commissioner of Social )  
19 Security, )  
20 Defendant. )  
21 \_\_\_\_\_ )  
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18 This matter is before the Court for review of the decision by the  
19 Commissioner of Social Security denying Plaintiff's application for  
20 disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have  
21 consented that the case may be handled by the Magistrate Judge. The  
22 action arises under 42 U.S.C. §405(g), which authorizes the Court to  
23 enter judgment upon the pleadings and transcript of the record before  
24 the Commissioner. The parties have filed the Joint Stipulation  
25 ("JS"), and the Commissioner has filed the certified Administrative  
26 Record ("AR").

27 Plaintiff raises the following issues:

28 1. Whether the Administrative Law Judge ("ALJ") erred in



1 Stand and walk six hours, sit for six hours. Postural  
2 limits, no ladders, ropes, scaffolding. The rest are all  
3 occasional. She should do no over-the-shoulder work with  
4 the left arm. Manipulation, there's no impairment according  
5 to the internal medicine examiner. And environmental she  
6 should avoid concentrated exposure to extreme cold, no  
7 exposure to unprotected heights or hazardous machinery.  
8 Finally she should not work in a noisy environment or where  
9 there is a need for a loud voice."

10 (AR 32-33.)  
11

12 The ALJ found that Plaintiff has severe impairments of vocal  
13 dysphonia with weak voice, hypertension, asthma, history of left  
14 shoulder dislocation, history of migraines, obesity, and enlarged  
15 facet cervical spine. (AR 17.) The ALJ summarized the testimony of  
16 Dr. Sparks concerning Plaintiff's functional abilities, noting his  
17 conclusion that she could do "no work in a noisy environment where it  
18 is necessary to speak in a loud voice. The undersigned concurs and  
19 adopts the testimony of the medical expert, ..." (AR at 20.)

20 Plaintiff asserts that the ALJ in fact rejected the opinion of  
21 Dr. Sparks, because he eliminated the disjunctive "or" in assessing a  
22 residual functional capacity ("RFC") that allows "no work in a noisy  
23 environment [or] where a loud voice is required." (AR at 18.)  
24 Plaintiff asserts that Dr. Sparks specifically intended his assessment  
25 to mean that Plaintiff could not work in a noisy environment or in an  
26 environment where it is necessary for her to speak in a loud voice.  
27 For the reasons set forth below, the Court concludes that the ALJ  
28 reasonably interpreted Dr. Sparks' opinion, and that no error

1 therefore occurred.

2 At the request of the Department of Social Services, Plaintiff on  
3 May 29, 2008 received an internal medicine consultative evaluation  
4 ("CE") from Dr. Raja. Dr. Raja's report indicates that Plaintiff  
5 "will be able to lift or carry 20 pounds occasionally and 10 pounds  
6 frequently, stand or walk six hours cumulatively in an eight-hour day  
7 and she will be able to do frequent stooping and crouching. She will  
8 be able to use her hands and fingers in repetitive hand-finger  
9 actions." (AR 183.) Dr. Raja did not assess any limitations with  
10 regard to Plaintiff's vocal dysphonia.

11 Plaintiff testified that because of her dysphonia, she cannot get  
12 past a first job interview. (AR 27.) The ALJ adopted an RFC which  
13 "limited [Plaintiff] to less than frequent verbal communication" (AR  
14 18) due to her vocal dysphonia, which leaves her with a weak voice.  
15 As an adjunct to that limitation, the ALJ found that Plaintiff cannot  
16 work in a noisy environment where a loud voice is required. (*Id.*) The  
17 RFC as determined by the ALJ is clearly intended to address  
18 Plaintiff's limitations in the area of vocal communication. There is  
19 nothing in Plaintiff's brief which would support a finding that she  
20 has a per se need to be limited to a quiet work environment.  
21 Specifically, there is no evidence that Plaintiff has a hearing  
22 impairment, that she has any difficulty when she is exposed to loud  
23 noises or voices, or that she has any psychological or mental health  
24 issues which would preclude her from being around a loud environment  
25 or loud noises. She is precluded from working in an environment where  
26 frequent communication or speaking in a loud voice would be necessary.

27 It is the province of the ALJ to interpret evidence, and where  
28 that interpretation is reasonable or rational, it must be upheld by

1 the Court. See Burch v. Barnhart, 400 F.3d 676, 678 (9<sup>th</sup> Cir. 2005).  
2 Based on the nature of Plaintiff's severe impairment of vocal  
3 dysphonia, the Court cannot find that the ALJ's interpretation of the  
4 ME's testimony as to particular limitations related to this severe  
5 impairment are either not rational or not reasonable. For that  
6 reason, the Court finds no error with regard to Plaintiff's first  
7 issue.

## 8 9 II

### 10 THE ALJ DID NOT ERR WITH REGARD TO TESTIMONY

#### 11 FROM THE VOCATIONAL EXPERT

12 In a related issue, Plaintiff asserts that the ALJ erred in  
13 accepting testimony at Step Five of the sequential evaluation process  
14 from the vocational expert ("VE").

15 The ALJ posed a hypothetical question to the VE which included  
16 the following relevant limitations:

17 "Should not work in a noisy environment or where the  
18 need for a loud voice. [sic] And we'll go ahead and add to  
19 that, should be limited to areas where frequent  
20 communication, verbal communication is not required, so less  
21 than frequent verbal communication."

22 (AR 39.)

23  
24 After considering this hypothetical, the VE identified the jobs  
25 of inspector, hand packager; small products assembler II; and  
26 assembler of plastic hospital parts. (AR 39-40.)

27 Plaintiff's assessment of error inheres in the argument that the  
28 identified work involves exposure to prohibited noise levels: "loud"

1 as to the occupation of inspector; "moderate" as to small products  
2 assembler II and assembler of plastic hospital parts.

3 Plaintiff's argument fails for essentially the same reasons as  
4 her first issue. Again, Plaintiff's impairment involves an inability  
5 to sustain loud or frequent speech. At the hearing, in response to  
6 the ALJ's specific questions, the VE testified that none of the  
7 identified occupations would require more than occasional verbal  
8 communication, and they would not be in noisy environments. (AR 40.)  
9 Further, the VE testified that her testimony was consistent with the  
10 Dictionary of Occupational Titles ("DOT"). (Id.)

11 While Plaintiff focuses on the level of noise in these work  
12 environments, she ignores the fact that the DOT assesses no  
13 requirement of talking for any of these occupations. If it did,  
14 Plaintiff's argument that there is a variance between the VE's  
15 testimony and the DOT requirements might hold water.

16 In sum, in this case, Plaintiff has a severe impairment which has  
17 relevance to whether her voice could be heard in a particular work  
18 setting. But for the occupations identified, there is no requirement  
19 that she use her voice in a frequent or loud manner.

20 The Court finds no error with regard to Plaintiff's second issue,  
21 and consequently, this matter will be affirmed. The Complaint will be  
22 dismissed with prejudice.

23 **IT IS SO ORDERED.**

24  
25 DATED: November 23, 2010

26 /s/  
VICTOR B. KENTON  
UNITED STATES MAGISTRATE JUDGE